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Denny v. New York Cent. Ry. Co. (1859) 79 Mass. 481 (13 Gray); *Memphis R. R. Co. v. Reeves* (1869) 77 U. S. 176 (10 Wall); *Grier v. Railroad* (1904) 108 Mo. App. 565; *Moffatt Commission Co. v. Union Pacific Ry. Co.* (1905) 88 S. W. Rep. 117 (Mo. App.). *Fires*: *Hoadley v. Northern Trans. Co.* (1874) 115 Mass. 304; *Scott v. Baltimore, etc., Steamship Co.* (1884) 19 Fed. Rep. 56; *Thomas v. Lancaster Mills* (1896) 71 Fed. Rep. 481; *Yazoo, etc., Ry. Co. v. Millsaps* (1899) 76 Miss. 855; *General Fire Extinguisher Co. v. Carolina, etc., Ry. Co.* (1904) 49 S. E. Rep. (N. C.) 208. *Freezing*: *Mich. Cent. Ry. Co. v. Curtis* (1875) 33 Mich. 6; *Herring v. Chesapeake, etc., Ry. Co.* (1903) 101 Va. 778. *Storms*: *Daniels v. Ballentine* (1872) 23 Ohio St. 532.

R. G. H.

THE EFFECT OF DOGMATIC CHANGES UPON THE LEGAL STATUS OF A CHURCH.
—The devolution of property held by a church, or in trust for a church, in the event of a split in the organization has been the occasion of much un-Christian controversy. The case of *Christian Church of Sand Creek et al. v. Church of Christ of Sand Creek et al.*, decided February 21, 1906, in the Illinois Supreme Court—76 N. E. Rep. 703—and the case of *Free Church of Scotland et al. v. Overtoun et al.* [1904] A. C. 515, are the most recent adjudications in England and America upon this subject. A comparison of the two cases would seem to indicate a greater similarity in the law of the two countries than has sometimes been thought to exist. The question involved is the execution of a trust. The church funds are a trust and should be administered in accordance with the wish of the donor. If the donor expressly provides that the property shall be devoted to the support of some specific form of religious doctrine or polity then his wish will be enforced, however difficult the questions may be. As to this there is no dispute. Often, however, the gift is to a specific church without any expressed qualification as to doctrine. The question then arises as to which of two rival branches of the former organization is entitled to the fund. For the purpose of settling this property question the courts will then determine which is the original organization—a question which they would otherwise decline to adjudicate.

The Sand Creek controversy arose in this wise. A congregation of the Disciples of Christ or "Christian" church was organized at Sand Creek in 1834. In government this denomination is purely congregational, and it has, says the opinion, "no creed except the Bible; the view of the followers of Alexander Campbell [the founder] being that, where the Bible speaks, the congregation and its several members are authorized to speak, but where it is silent the congregation and the members thereof should remain silent." Since 1849 there has been throughout the denomination a division of opinion as to the practice to be adopted with reference to matters on which the Bible is silent, such as the use of instrumental music in the services, employment of a minister at a fixed salary and for a fixed time, organizations subsidiary to the church, and church fairs. One view is that in such matters the silence of the Bible should be construed as a positive prohibition; the other is that its silence makes their employment permissive at the discretion of the congregation.

The former view had been in force in the congregation of Sand Creek until 1904, when a division took place. Those in favor of the more liberal rule (a minority of the former congregation) bring this bill for the construction of the deed to the church site and for a decree adjudging that land and church to them. The plaintiffs showed that a large majority of the congregations of the denomination held their view and they claimed also the authority of the founder himself. The court, however, refused the decree, laying down the rule that "When the members of a religious congregation divide, and one faction breaks away from the congregation and forms a new congregation, the title to the property of the congregation will remain in that part of the congregation which adheres to the tenets and doctrines originally taught by the congregation to whose use the property was originally dedicated." The defendants maintained those tenets and were entitled to possession.

In the Free Church case the factional differences were less important. That church was founded in 1843 by secession from the Established (Presbyterian) Church of Scotland as a protest against the form of establishment then in force; but it declared in favor of a purified establishment. In 1900 this church united with the United Presbyterian Church and thereupon declared its opposition to any form of establishment, and also amended the statement of the dogma of predestination in the Westminster Confession, its articles of faith. To a minority of some thirty ministers and a few thousand laymen, which protested against these changes, the House of Lords awarded all the property of the former Free Church. This church had been the largest in Scotland, and its property consisted of about 800 church edifices, with their schools, three universities, and over £1,000,000 of invested funds.

In an article on "American Versus British Ecclesiastical Law," in the April number of the *Yale Law Journal* Professor Epaphroditus Peck, in connection with a discussion of this case takes occasion to congratulate American lawyers and churchmen on our courts having clearly departed from the English precedents. He asserts the American doctrine to be that of *Watson v. Jones*, 13 Wall. 679, which is, no doubt, the leading American case. Briefly stated, the rules there enunciated are: 1. When the property conveyed is in express terms devoted to the teaching, support or spread of some specific form of religious doctrine or belief, then the express trust must be enforced, however difficult the question involved may be. 2. "When the property is held by a religious congregation which, by the nature of its organization is strictly independent of other ecclesiastical organizations, and so far as church government is concerned, owes no fealty or obligation to any higher authority," then "the usual rules governing voluntary associations will prevail, that the majority governs." 3. Where the congregation holding the property is but a subordinate member of a general church organization with a supreme judicatory, the controversy must be submitted to the church tribunals, and the courts will not act except to follow and enforce their decision.

In the decision of the Free Church case there is nothing to indicate that the English courts disagree with the conclusions stated under rules 1 and 3 of *Watson v. Jones*. Rule 2, however, if sustained without qualification by

the weight of American authority, marks an essential difference in the law of the two nations. As stated by Mr. Francis Lowell in his article in the *Columbia Law Review* for March, 1906, "The Free Church of Scotland Case," the difference would be that the English courts seek the unity of a church in identity of doctrine, the American courts in continuity of organization. But is this the correct American doctrine?

The Illinois case was decided squarely on a question of dogma or polity, although there was no provision in the deed for the support of any specific doctrine. The faction holding the old beliefs was, it is true, in this case the majority also. But in *Smith v. Pedigo*, 145 Ind. 361, where the old school party was in the minority, there was the same holding. A Baptist church (congregational in government) had previously held the belief that "the Holy Spirit acts independently, directly, and through no communication whatever except the immediate contact with the life-giving spirit given to the sinner's heart." A majority, pursuing the regular course of procedure, amended the confession of faith so as to have it declare "that God does sometimes communicate the same life-giving power in some other way than directly and abstractly," in other words, that He uses "means of grace." The court limited the application of rule 2 of *Watson v. Jones*, to minor questions of policy; and said, "There was not only no case before the court of a church divided into two factions on account of one of them having abandoned the original faith on which it was founded, but the court was not speaking of such a case. The existing religious opinions, the right of inquiry into which is denied in the opinion [in *Watson v. Jones*] has no reference to the original faith on which the church was founded, but has reference to the conflicting views of the two opposing bodies as to Christian duty to adhere to the lawful government of the country in time of war or rebellion." Other cases in which the minority holding the old doctrine were awarded property left in general to the use of the congregation are *Hale v. Everett*, 53 N. H. 9; *Re-organized Church of Jesus Christ of Latter Day Saints v. Church of Christ*, 60 Fed. 937; *Fernstler v. Seibert*, 114 Pa. St. 196; *Mt. Zion Baptist Church v. Whitmore*, 83 Ia. 138; *Mount Helm Baptist Church v. Jones*, 79 Miss. 488; *Park v. Chaplin*, 96 Ia. 55; *Nance v. Busby*, 91 Tenn. 303 (citing and approving the English cases); *Christian Church v. Carpenter*, 108 Ia. 647.

In many cases where doctrinal changes by the regular action of the majority have been permitted without forfeiture of property the courts have distinctly averred that the changes were not fundamental. *Schlichter v. Keiter*, 156 Pa. St. 119, 142; *Fadness v. Braumborg*, 73 Wis. 257; *Kuns v. Robertson*, 154 Ill. 394. A change in a church of the Congregational denomination from Trinitarian to Unitarian belief was permitted without forfeiture of an endowment given it upon its foundation. The gift had been made to found a Congregational church. At the time the gift was made no doctrine had been formulated for that congregation, and churches holding both beliefs had existed in the denomination long prior to the donation of the fund. Hence there was no presumption as to which form of belief the donor intended to support. *The Dublin Case*, 38 N. H. 459. Under a law which provided the same system of incorporation and property holding for religious societies as for other mutual associations, and which made the mem-

bers of each congregation the beneficial owners of the property thereof, it was held that such congregations might carry with them their property, even when going over to another denomination in direct violation of the general canons of the church. *Petty v. Tooker*, 21 N. Y. 267; *Youngs v. Ransom*, 31 Barb. 49; *Burrel v. Associate Reformed Church*, 44 Barb. 282. (These cases are discussed in *Hale v. Everett*, *supra*.) In *Calkins v. Cheney*, 92 Ill. 463, an Episcopal parish of the Low Church school took a deed of its property not through the regular officers, but three trustees; and this was done for the express purpose of keeping it out of the control of the diocesan authorities. *Held*, that on secession from the church this parish might take the property with it. "That a trust can be created in opposition to the known will and earnest efforts to the contrary of those by whom it is claimed to be created, is a doctrine which we cannot indorse." This case, then, falls under rule 1 of *Watson v. Jones*. In the absence of conditions such as those present in these last two cases the seceding congregation must give up its property. *First Presbyterian Church of Louisville v. Wilson*, 14 Bush (Ky.) 252. *Winebrenner v. Calder*, 43 Pa. St. 244; *Ferraria v. Vasconcelles*, 23 Ill. 403; *Vasconcellos v. Ferraria*, 27 Ill. 237; same, 31 Ill. 25.

These exceptional cases serve but to prove the rule that, when the question concerns solely the identity of a religious society, the courts, American as well as English, will require identity of doctrine as well as of organization. Admittedly most of the American courts will be more liberal in permitting changes of doctrine than the courts of England. It is doubtful whether any American tribunal would have decided the Free Church case as it was decided. Yet the difference is not in legal theory but in its application—a difference to be accounted for, as Mr. Lowell in his paper cited above points out, in the temperament of the people and the different position of the churches of the two countries. The Sand Creek case would seem to approach very close to the English cases.

C. L. D.

BAYS AND GULFS AS TERRITORY OF THE ADJOINING NATION.—On the question of international law arising out of the prosecution of foreign trawlers in the Moray Firth, the *Law Times*, of London, in a recent issue, comments as follows upon the question and upon the paper (published 2 MICH. LAW REV. 333) read by Dean Charles Noble Gregory before the International Law Association at its meeting at Antwerp:

"Dean Gregory, who was Vice President of the Antwerp Conference, has collected and discussed most of the cases bearing on the subject of '*Jurisdiction over Foreign Ships in Territorial Waters*.' On the particular branch of the subject which is at present canvassed in Scotland, the dean has some pregnant remarks, and his conclusions are as follows: 'It may be taken for granted that every nation has jurisdiction over her ports, gulfs and bays which are inclosed within her borders. As to what waters must be treated as so inclosed there is no complete agreement. According to one theory, if the points of land guarding the entrance to the water are sufficiently near so that persons on one side can distinctly see persons on the other with the unaided eye, the waters within such points belong to the adjoining nation.